
TITLE 329 SOLID WASTE MANAGEMENT BOARD

Proposed Rule
LSA Document #10-66

DIGEST

Adds [329 IAC 9-9](#) concerning training of persons who operate underground storage tank (UST) systems. Effective 30 days after filing with the Publisher.

HISTORY

First Notice of Comment Period: February 17, 2010, Indiana Register (DIN: [20100217-IR-329100066FNA](#)).
Second Notice of Comment Period: February 1, 2012, Indiana Register (DIN: [20120201-IR-329100066SNA](#)).
Notice of Public Hearing: February 1, 2012, Indiana Register (DIN: [20120201-IR-329100066PHA](#)).
Change in Notice of Public Hearing: March 21, 2012, Indiana Register (DIN: [20120321-IR-329100066CHA](#)).
Date of Second Hearing: April 17, 2012.

PUBLIC COMMENTS UNDER [IC 13-14-9-4.5](#)

[IC 13-14-9-4.5](#) states that a board may not adopt a rule under [IC 13-14-9](#) that is substantively different from the draft rule published under [IC 13-14-9-4](#), until the board has conducted a third comment period that is at least 21 days long.

Because this proposed rule is not substantively different from the draft rule published on February 1, 2012, at DIN: [20120201-IR-329100066SNA](#), the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

IDEM requested public comment from February 1, 2012, through March 2, 2012, on IDEM's draft rule language. IDEM received comments from the following parties:

AT & T Services, Inc. (AT & T)

Environmental Health & Safety Communications Panel (EHSCP)

ITR Concession Company (ITRCC)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: AT & T Services, Inc., by counsel, expresses its concurrence and support of the attached comments submitted by the Environmental, Health & Safety Communications Panel in the referenced rulemaking. Should you have any question, please contact the undersigned. (AT & T)

Comment: The Environmental, Health & Safety Communications Panel (EHSCP), previously known as the National Telecommunications Safety Panel (NTSP), is pleased to provide comments in response to proposed revisions to LSA Document #10-66 (UST Operator Training Program).

The EHSCP is a consortium of telecommunications environmental, health, and safety professionals dedicated to promoting employee safety and health, and environmental responsibility throughout the telecommunications industry¹. The EHSCP strives to provide constructive input in the development and implementation of environmental, health, and safety standards and guidelines that affect the varied businesses within the telecommunications industry. As such, the panel maintains an active advocacy role, providing comments and recommendations to federal and state agencies when issues concern the telecommunications industry. More information regarding the EHSCP may be found at www.ehscp.org.

¹ The EHSCP member companies include Alcatel-Lucent, AT & T, CenturyLink, Ericsson, Cincinnati Bell, NextG Networks, Sprint-Nextel, T-Mobile, Verizon, Verizon Wireless, and Windstream Communications.

The member companies provide telecommunications services to federal, state and local government agencies, business and households nationwide. The same members' systems provide emergency communications for government, industry and private citizens. EHSCP member companies own and operate underground fuel storage tanks throughout the U.S. Some of these tanks support boilers and other building systems but the bulk of the USTs support emergency power generators which provide backup power to maintain critical infrastructure during power outages, natural disasters, and other emergencies. The EHSCP member companies do not sell regulated substances and do not dispense fuel from USTs that support emergency power generation. Many of these tanks are at unmanned, remote locations. (EHSCP)

Response (to the above two comments): IDEM thanks the companies for providing their history and background information and their goals and objectives. IDEM appreciates the role and efforts of the panel with regards to this rulemaking for the benefit of its constituents as well as IDEM.

Comment: Definition of unattended facility

Many telecommunication facilities that support our wireline infrastructure are also unmanned. Therefore, we

recommend the following wording change.

[329 IAC 9-9-2\(e\)](#)

"Unattended facility" means a UST system facility that operates under the applicable provisions of this article without the daily presence of a certified operator. Such a facility includes the following:

- (1) An emergency generator at a telecommunications tower or facility.
- (2) A card lock/card access facility. (AT & T, EHSCP)

Comment: [329 IAC 9-9-2](#) Sec. 2 (e) as proposed:

Sec. 2 (e) (1) is believed to be too limiting. Many other locations are used for emergency standby generators than purely telecommunication towers. I believe a better description would be:

- (1) An emergency standby generator UST limited to occasional use during normal service power loss.

Sec. 2 (e) (2) is believed to be too limiting. Many other devices including special programmable keys, proximity readers, keypad ID entry, programmed vehicle transmitters, etc. are used in addition to card lock/card access for controlling small unattended dispensing sites. I believe a better description would be:

- (2) An electronic control device for limited access dispensing. (ITRCC)

Response(to the above three comments): IDEM agrees with the commentors on the rule language at [329 IAC 9-9-2\(e\)](#), and has made the necessary changes to the draft rule language with a slight rephrasing of the comment language to make it consistent with the rest of the rule.

Comment: General Provisions

When required to list contact information at an unattended facility, we are requesting that IDEM allow owners and operators to list an 800 number that is staffed 24 hours per day, 365 days per year rather than requiring them to designate a specific individual's phone number as the tank operator contact for a given UST facility. This will allow companies to contact the appropriate tank operator currently on duty, or other appropriately trained personnel to respond to and manage a spill or release in the most expeditious manner possible. Therefore, we recommend the following wording change.

[329 IAC 9-9-3\(c\)](#)

The owner or operator of an unattended facility is not required to designate a Class C operator or have a Class A, Class B, or Class C operator present on-site during the operation of the tank system. A sign must be posted in a conspicuous place stating the emergency shut-off procedures and the name, address, and telephone number of the ~~Class B~~ **that will reach a tank** operator for the UST system along with the name and telephone number of the local emergency responders, including 911 personnel. However, the designated operators for the UST system remain responsible for operation and maintenance activities and responding to alarms and emergencies and must otherwise meet the requirements of this rule. (AT & T, EHSCP)

Response: IDEM agrees with the commentors on the rule language at [329 IAC 9-9-3\(c\)](#), and has made the necessary changes to the draft rule language with a slight rephrasing of the comment language to make it consistent with the rest of the rule.

Comment: Classification of Operators

It appears that the requirement that the Class C operator be an employee is based upon the belief that the entities operating the tanks are petroleum retail companies whose business relies upon the use of tanks. For such parties the requirement that the operator is an employee makes sense. However for those who have tanks that are incidental to their business, such as those tanks associated with emergency generators, the requirement makes no sense and provides no environmental benefit. In addition, it will require owners to train operators who are not involved with tank management and who will be less effective in the performance of the required duties than a person knowledgeable about tanks. Therefore, if maintaining the UST system is within a vendor or contractor's scope of duties and they can take appropriate action in response to an emergency, there is no reason why they could not be the designated Class C operator. So long as the designated contractor completes the required training and passes the required test, it should not matter whether the Class C operator is an employee or vendor, human health and the environment will be protected in either case. Therefore, we recommend the following wording change.

[329 IAC 9-9-5\(c\)](#)

A Class C operator is ~~an employee of the UST system facility~~ **a designated individual** who has on-site responsibility to initially respond to alarms or other indications of emergencies caused by spills, leaks, or releases from UST systems. The Class C operator notifies the Class B or Class A operator for the UST system and appropriate emergency responders, including 911 personnel, when necessary. This operator also controls or monitors the dispensing or sale of regulated substances, **where it occurs.** (AT & T, EHSCP)

Response: IDEM has carefully reviewed the comments on [329 IAC 9-9-5\(c\)](#) but does not agree with the recommended changes for the following reasons: First, unattended facilities (including USTs only associated with emergency generators) are not required to have a Class C operator at all under [329 IAC 9-9-3\(c\)](#). Second, the EPA grant guidelines specify that a Class C operator must be an on-site employee.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On April 17, 2012, the Solid Waste Management Board (board) conducted the first public hearing/board

meeting concerning the development of [329 IAC 9-9](#), concerning training of persons who operate underground storage tank (UST) systems.

No comments were made at the first hearing.

[329 IAC 9-9](#)

SECTION 1. [329 IAC 9-9](#) IS ADDED TO READ AS FOLLOWS:

Rule 9. Underground Storage Tank Operator Training and Certification

[329 IAC 9-9-1](#) Applicability

Authority: [IC 4-22-2](#); [IC 13-14-8-4](#); [IC 13-14-8-7](#); [IC 13-19-3-1](#); [IC 13-23](#)

Affected: [IC 13-23](#)

Sec. 1. This rule applies to all owners and operators of UST systems, and operators of UST systems that are classified by this rule. This rule establishes UST operator training and certification requirements.

(Solid Waste Management Board; [329 IAC 9-9-1](#))

[329 IAC 9-9-2](#) Definitions

Authority: [IC 4-22-2](#); [IC 13-14-8-4](#); [IC 13-14-8-7](#); [IC 13-19-3-1](#); [IC 13-23](#)

Affected: [IC 13-23](#)

Sec. 2. (a) In addition to the definitions in [329 IAC 9-1](#), the definitions in this section apply throughout the rule.

(b) "Certificate" means a document issued by the department to a person who has met the training and operator knowledge evaluation requirements of this rule for a Class A or Class B UST system operator. A certificate is issued by the department online after the person has successfully completed the online training and operator knowledge evaluation program provided by the department.

(c) "Certified" means the following:

(1) For a Class A or Class B operator, a person that has been issued a Class A or Class B operator's certificate by the department for the period the certificate is valid.

(2) For a Class C operator, an employee that has been issued a Class C certification by the designated Class A or Class B operator for the period the certification is valid.

(d) "On-site" means all areas within the facility boundary.

(e) "Unattended facility" means a UST system facility that operates under the applicable provisions of this article without the daily presence of a certified operator. Such a facility includes a facility utilizing:

(1) only an emergency standby generator UST that is limited to use during service power loss; or

(2) an electronic control device for limited access dispensing.

(Solid Waste Management Board; [329 IAC 9-9-2](#))

[329 IAC 9-9-3](#) General provisions and transition

Authority: [IC 4-22-2](#); [IC 13-14-8-4](#); [IC 13-14-8-7](#); [IC 13-19-3-1](#); [IC 13-23](#)

Affected: [IC 13-23](#)

Sec. 3. (a) The owner or operator of a UST system must designate a Class A, Class B, and Class C operator for the UST system on or before August 8, 2012, except as provided in subsection (c). The owner

and operator of the UST system are responsible for ensuring that the Class A, Class B, and Class C operators fulfill their responsibilities under this rule. Each designated operator must be certified under this rule.

- (1) An incoming designated Class A or Class B operator for an existing UST system without compliance deficiencies documented by the department must be certified within thirty (30) days of assuming full operation and maintenance responsibilities at the UST system.
- (2) An incoming designated Class C operator must be certified before assuming responsibilities at a UST system facility.
- (3) An incoming designated Class A or Class B operator at an existing facility that has compliance deficiencies documented by the department must be certified before assuming full operation and maintenance responsibilities at a UST system facility.
- (4) The owner or operator of a UST system that goes into use after August 8, 2012, must designate a certified Class A, Class B, and Class C operator for that system within thirty (30) days of bringing the UST system into use.

If the owner and operator of the UST system are separate persons, either the owner or operator may designate the Class A, Class B, and Class C operators for the UST system, but both the owner and the operator have equal responsibility to ensure that Class A, Class B, and Class C operators are designated. An owner or operator may contract with another person to provide Class A or Class B operator services for the owner or operator's UST system.

(b) Either a Class A, Class B, or Class C operator must be present on-site during the operation of a UST system facility, except as provided in subsection (c). At the owner or operator's discretion, one (1) person may be designated as the Class A, Class B, and Class C operator for a facility, provided that person complies with the requirements for each class for which that person is designated.

(c) The owner or operator of an unattended facility is not required to designate a Class C operator or have a Class A, Class B, or Class C operator present on-site during the operation of the tank system. A sign must be posted in a conspicuous place stating the emergency shut-off procedures and the name, address, and telephone number that will reach a designated operator for the UST system along with the name and telephone number of the local emergency responders, including 911 personnel. However, the designated operators for the UST system remain responsible for operation and maintenance activities and responding to alarms and emergencies and must otherwise meet the requirements of this rule.

(d) A certified Class A or Class B operator may be a designated operator for more than one (1) UST system facility.

(e) A person shall not perform the duties of a Class A or Class B operator unless that individual has a valid certificate from the department relating to that class. A person shall not perform the duties of a Class C operator unless that person has a valid certification as a Class C operator.

(Solid Waste Management Board; [329 IAC 9-9-3](#))

[329 IAC 9-9-4](#) Penalties and enforcement

Authority: [IC 4-22-2](#); [IC 13-14-8-4](#); [IC 13-14-8-7](#); [IC 13-19-3-1](#); [IC 13-23](#)

Affected: [IC 13-14](#); [IC 13-23-14](#); [IC 13-30](#)

Sec. 4. Penalties for violation of this article shall be governed by [IC 13-14](#), [IC 13-23-14](#), and [IC 13-30](#).

(Solid Waste Management Board; [329 IAC 9-9-4](#))

[329 IAC 9-9-5](#) Classification of operators

Authority: [IC 4-22-2](#); [IC 13-14-8-4](#); [IC 13-14-8-7](#); [IC 13-19-3-1](#); [IC 13-23](#)

Affected: [IC 13-23](#)

Sec. 5. (a) A Class A operator is the person with primary responsibility for the overall operation of one (1) or more UST systems. The Class A operator's responsibilities include managing resources and personnel, such as establishing work assignments, to achieve and maintain compliance with this article and state and federal laws related to USTs. Class A operators are responsible for ensuring that appropriate personnel do all of the following:

- (1) Properly operate and maintain the UST system.**
- (2) Maintain appropriate records.**
- (3) Receive training to operate and maintain the UST system and keep records.**
- (4) Properly respond to emergencies or alarms related to releases, leaks, or spills from UST systems at the facility.**
- (5) Make financial responsibility documents available to the department as required.**

(b) A Class B operator is a person who has daily on-site responsibility and direct control over the operation, maintenance, and record keeping for a UST system. Class B operators are responsible for monitoring and ensuring that all of the following occur:

- (1) Release or leak detection methods, record keeping, and reporting requirements are met.**
- (2) Release or leak prevention equipment, record keeping, and reporting requirements are met.**
- (3) All relevant equipment complies with performance standards.**
- (4) Appropriate personnel are trained to properly respond to emergencies or alarms caused by releases, leaks, or spills from the UST system.**
- (5) All designated Class C operators are provided with written instructions that include emergency response procedures as follows:**
 - (A) Procedures for overfill protection during delivery of regulated substances.**
 - (B) Operation of emergency shut-off systems.**
 - (C) Appropriate responses to all alarms.**
 - (D) Reporting of leaks, spills, and releases.**
 - (E) All site-specific emergency procedures.**
 - (F) The name and contact information of persons to contact if a leak, spill, or release occurs.**

(c) A Class C operator is an employee of the UST system facility who has on-site responsibility to initially respond to alarms or other indications of emergencies caused by spills, leaks, or releases from UST systems. The Class C operator notifies the Class B or Class A operator for the UST system and appropriate emergency responders, including 911 personnel, when necessary. This operator also controls or monitors the dispensing or sale of regulated substances.

(d) The Class C operator training must include an understanding of the instructions described in subsection (b)(5) and how to take appropriate action in response to the following:

- (1) Emergencies, including situations posing an immediate danger or threat to the public or to the environment that require immediate action.**
- (2) Alarms caused by spills, leaks, or releases from a UST system.**
- (3) Reports from the public of damaged equipment or unusual operating conditions.**

(Solid Waste Management Board; [329 IAC 9-9-5](#))

[329 IAC 9-9-6](#) Training requirements

Authority: [IC 4-22-2](#); [IC 13-14-8-4](#); [IC 13-14-8-7](#); [IC 13-19-3-1](#); [IC 13-23](#)

Affected: [IC 13-23](#)

Sec. 6. (a) A person seeking to be certified as a Class A or Class B operator shall complete the online training and operator knowledge evaluation course provided by the department that relates to the responsibilities of the Class A or Class B operator contained in this rule.

(b) Class C operator training shall be conducted as follows:

- (1) A certified Class A or Class B operator may provide training or may authorize training for a Class C operator employed at the UST system facility where the Class A or Class B operator is a designated operator. A Class A or Class B operator is not required to obtain approval from the department prior to providing training or authorizing training for a Class C operator.**

(2) Trainers of Class C operators shall use instructional materials covering the topics listed in section 5(b)(5) and 5(d) of this rule.

(3) The trainer and the designated Class A or Class B operator shall sign a certification provided by the department online verifying that the Class C operator has been successfully trained by a qualified trainer and is certified for three (3) years from the date of the training.

(c) Class A, Class B, and Class C operators must receive full refresher training under the requirements of this rule and be recertified every three (3) years unless the provisions of section 8 of this rule apply. For Class A and Class B operators, retraining and recertification must be accomplished prior to the expiration of the certificate. For Class C operators, retraining and recertification must be accomplished prior to the expiration of the certificate.

(Solid Waste Management Board; [329 IAC 9-9-6](#))

[329 IAC 9-9-7](#) Certified operator records; inspections

Authority: [IC 4-22-2](#); [IC 13-14-8-4](#); [IC 13-14-8-7](#); [IC 13-19-3-1](#); [IC 13-23](#)

Affected: [IC 13-23](#)

Sec. 7. (a) Owners and operators shall maintain records identifying designated and certified Class A, Class B, and Class C operators of each UST system as required in [329 IAC 9-3-1\(d\)](#).

(b) When requested by the department or at any inspection conducted by the fire marshal, owners and operators of a facility or facilities containing a UST system shall provide a list of designated certified Class A, Class B, and Class C operators for each facility.

(c) All records maintained under this section must include current contact information for each designated operator, including a telephone number and mailing address.

(Solid Waste Management Board; [329 IAC 9-9-7](#))

[329 IAC 9-9-8](#) Failure to comply; operator retraining and recertification

Authority: [IC 4-22-2](#); [IC 13-14-8-4](#); [IC 13-14-8-7](#); [IC 13-19-3-1](#); [IC 13-23](#)

Affected: [IC 13-23](#)

Sec. 8. (a) If the UST system for which the operators are responsible is found, through a department on-site inspection or records inspection, to have one (1) or more than one (1) deficiencies as follows:

(1) failure to comply as defined in [329 IAC 9-1-19.5](#);

(2) failure to timely submit notifications under this article; or

(3) failure to maintain financial responsibility under this article;

the Class A, Class B, or Class C operator must go through retraining and be recertified when, in the judgment of the commissioner, the deficiencies demonstrate the need for retraining and recertification.

(b) The Class A, Class B, or Class C operator, if required by the department, must complete retraining and be recertified within thirty (30) days of notification by the department that the operator or operators must be retrained.

(c) Failure to timely complete retraining will void the operator's certified status until the operator is retrained and recertified.

(d) An operator that is recertified under this section is recertified for a period of three (3) years, unless the provisions of this section apply.

(Solid Waste Management Board; [329 IAC 9-9-8](#))

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